

Exempt manufacturing equipment can include independent devices or tools separate from any machinery but essential to an integrated manufacturing or assembling process. See 86 Ill. Adm. Code 130.330(c)(3). (This is a GIL.)

September 24, 2001

Dear Xxxxx:

This letter is in response to your letter dated July 5, 2001. We are unable to comply with your request to issue a Private Letter Ruling on behalf of the AAA. This is because Department rules prohibit the issuance of a Private Letter Ruling to business, trade, industrial or similar groups. Please refer to 2 Ill. Adm. Code 1200.110(a)(3)(B), which can be accessed at <http://www.revenue.state.il.us/legalinformation/regs/part1200>. As a result, we are responding with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c).

In your letter, you have stated and made inquiry as follows:

On behalf of the AAA, I submit this Private Letter Ruling Request pursuant to 2 Ill.Admin.Code §1200.110. I have enclosed a copy of Illinois Form 2848, Power of Attorney, authorizing this firm to submit this request on behalf the AAA.

This request is sought for all tax periods during which the related purchases will occur. The taxpayer is not under audit by the Department of Revenue or any other taxing authority at this time. To the best of our knowledge, the Department has not ruled on the same or a similar issue for our client or any of its tax predecessors, nor has the issue been submitted to the Department and withdrawn by our client before the Department issued its private letter ruling.

Material Facts

AAA is a private agricultural marketing cooperative operating from its [ILLINOIS] business location. The Cooperative was organized under state statute to establish a processing facility in Illinois to promote the State's industry. To enable the Cooperative to meet its statutory mandate, the Cooperative will receive various grants from the State of Illinois over a ten-year period. A substantial portion of the grant monies are to be used for the construction of a processing facility and the purchase of related processing equipment. The Cooperative is located in a designated Enterprise Zone.

The processing facility will be designed to process PRODUCT sold to the Cooperative by its producer-members into food products for human consumption. The products will

be packaged for retail sale at the processing facility and delivered to customers in fresh or frozen condition.

There are various stages in the manufacturing process from the time the PRODUCTS are unloaded from the delivery trucks until the processed PRODUCTS are delivered to retailers. At the time the PRODUCTS are unloaded from the delivery trucks, they are kept in concrete holding tanks until the PRODUCT enter the manufacturing process. At the beginning of the manufacturing process, the PRODUCTS are moved from the holding tanks to the processing tables on a series of conveyor belts, then either hand-processed or machine-processed into the consumable food products. A forklift will be used to transport the products between processing stations not connected by conveyor belts, such as into and out of freezers, before the product is packaged.

After the PRODUCTS are processed into a consumable form, they are either packaged for fresh shipping or are packaged for freezing. Once the PRODUCTS are packaged for frozen shipment, they are transported by forklift to the spiral freezer and slowly moved through the spiral freezer. The spiral freezer cools the PRODUCTS from approximately 40° to 0° to preserve the PRODUCTS to prevent spoilage. After the PRODUCTS reach the appropriate freezing temperature, the frozen packages are stored in specially equipped deep freezers to continue preservation of the products until they are loaded by forklift onto freezer trucks for delivery.

Tax Issues and Taxpayer's Position

The Illinois Retailer's Occupation Tax [35 ILCS 120/1 et seq.] and Use Tax [35 ILCS 105 et seq.] are assessed on the sale or use by Illinois residents of tangible personal property within the State of Illinois. Each Act provides, however, that the sales or use of certain tangible personal property may be exempt; one such exemption applies to manufacturing and assembling machinery and equipment used primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease. 35 ILCS 105/3-(18)5.

Under the exemption, manufacturing and assembling machinery and equipment used primarily in the process of manufacturing are exempt from the imposition of Illinois Sales/Use Taxes. 35 ILCS 105/3-5; 35 ILCS 120/2-45. Machinery and equipment must be used primarily in the manufacturing or assembling process; this is defined as use over 50% in an exempt manner in order to qualify as exempt. 86 Ill.Admin.Code §130.330(d). The following activities are generally considered to be an exempt use of machinery and equipment:

- (a) The use of machinery or equipment to effect a direct and immediate physical change upon tangible personal property to be sold;
- (b) The use of machinery or equipment to guide or measure a direct and immediate physical change upon tangible personal property, provided such function is an integral and essential part of tuning, verifying, or aligning the component parts of such property;
- (c) The use of machinery or equipment to inspect, test or measure the tangible personal property to be sold where such function is an integral part of the production flow;

- (d) The use of machinery and equipment to convey, handle, or transport the tangible personal property within production stations on the production line; and
- (e) The use of machinery or equipment to place the tangible personal property to be sold into the container, package, or wrapping in which such property is normally sold where such machinery or equipment is used as part of an integrated manufacturing process.

[86 Ill.Admin.Code §130.330(d)(3).]

Certain activities are generally considered to not be manufacturing in nature:

- (a) The use of machinery or equipment to store, convey, handle or transport materials or parts or sub-assemblies prior to their entrance into the production cycle;
- (b) The use of machinery or equipment to store, convey, handle or transport finished articles of tangible personal property to be sold or leased after completion of the production cycle;
- (c) The use of machinery or equipment in the disposal of waste, scrap or residue; and
- (d) The use of machinery or equipment for general ventilation, heating, cooling, climate control or general elimination, not required by the manufacturing process.

[86 Ill.Admin.Code §130.330(d)(4).]

It is the taxpayer's position that its process and the freezers used in the final stage of processing will be treated as exempt from Illinois ROT/UT, because the spiral freezer and deep freezes are used to create and maintain the appropriate condition of the packaged product to prevent spoilage before shipping. As such, the machinery and equipment are integral to the manufacturing process and therefore qualify for the tax exemption.

It is also the taxpayer's position that the forklifts are used primarily to transport work in progress during the production process, and incidentally to transport finished products after the manufacturing process is complete. As such, the forklifts qualify for the manufacturing machinery and equipment exemption.

Ruling Requested

AAA respectfully requests that the Department issue a Private Letter Ruling that specifies: (1) that the frozen pack stage of the process is an integral part of its manufacturing process and that equipment used at that stage of the process is exempt from Illinois Retailers Occupation Tax and Illinois Use Tax; and (2) that the forklifts are primarily used in the manufacturing process in an exempt manner and are therefore exempt from Illinois Retailers Occupation Tax and Illinois Use Tax; and that the Cooperative will be issued a sales and use tax exemption certificate to that effect.

Enclosed is a copy of 86 Ill. Adm. Code 130.330 concerning the Manufacturing Machinery and Equipment Exemption. In general, the Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease.

The manufacturing process is the production of articles of tangible personal property, whether such articles are finished products or articles for use in the process of manufacturing or assembling different articles of tangible personal property by procedures commonly regarded as manufacturing, processing, fabricating, or refining which changes some existing material or materials into a material with a different form, use or name. These changes must result from the process in question and be substantial and significant, Section 130.330(b)(2).

The Department has determined the production of food products is a manufacturing process that can qualify for exemption. As a general proposition, purchasers of equipment to be used primarily in the manufacture of food products for sale, such as cheese, butter or PRODUCT, can claim the exemption because the food processing constitutes the manufacturing or assembling of tangible personal property. Independent devices, separate from machinery but essential to the manufacturing or assembling process can qualify, including parts which require periodic replacement in the normal course of operation. However, the exemption does not include hand tools, consumable supplies, fuel and personal apparel items. See Section 130.330(c)(3).

Regarding forklifts and other moving equipment, please be advised machinery or equipment that is used primarily to convey, handle, or transport tangible personal property to be sold within production stations on production lines can qualify for the exemption. See 86 Ill. Adm. Code 130.330(d)(3)(D). However, the exemption does not extend to machinery or equipment used primarily to move materials prior to their introduction into the production cycle or subsequent to the completion of the production cycle. See 86 Ill. Adm. Code 130.330(d)(4)(C) and (D).

In the production of frozen food, the Department has determined that machinery or equipment used to prepare and store the food in its frozen state is within the production cycle. Accordingly, spiral and deep freezers used to freeze and maintain the product in a frozen condition can qualify for the exemption.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Karl W. Betz
Associate Counsel

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